

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

Court File No. 4:20-cv-4133

CHARLES KENDALL LUNDBERG,

Plaintiff,

vs.

COMPLAINT AND DEMAND FOR JURY TRIAL

MICHAEL ROBERT FERRIE and
FEDERAL EXPRESS CORPORATION,

Defendants.

Comes now the Plaintiff, for his cause of action against the Defendants herein states and alleges as follows:

I.

That Plaintiff, Charles Kendall Lundberg, is a resident of Lincoln County, Minnesota, residing at 1930 Highway 15, Lake Benton, Minnesota.

II.

That Defendant, Michael Robert Ferrie (hereinafter “Defendant Ferrie”), is a resident of Lincoln County, South Dakota, residing at 6303 S. Avalon Avenue, Sioux Falls, South Dakota. That Defendant, Federal Express Corporation (hereinafter “Defendant FedEx”), is a Delaware Corporation with an address of 4001 Leandenhall Road, Mount Laurel, New Jersey.

III.

That there exists diversity jurisdiction pursuant to 28 USCA §1332 because the parties are a citizen of one state and a corporation of another state. In addition, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000).

IV.

That on or about March 28, 2019, at approximately 10:05 a.m., the Plaintiff was driving his 2007 Toyota Sequoia, Minnesota license plate 132NCL, in a westbound direction on 6th Street/Highway 14 near the intersection with I-29, in the County of Brookings, State of South Dakota.

V.

That at the same approximate time and place, Defendant Ferrie was driving a 2015 Isuzu utility (FedEx) truck, South Dakota license plate 10500V, in a westbound direction on 6th Street/Highway 14 near the intersection with I-29, in the County of Brookings, State of South Dakota. That said vehicle was owned by Defendant FedEx.

VI.

That Plaintiff was stopped at the intersection waiting for the traffic signal to turn green. That Defendant Ferrie was stopped behind him. That as the traffic signal turned green, Defendant Ferrie accelerated at a quicker rate than the Plaintiff. That as a result, an accident occurred, whereby the front of the Defendants' truck struck the rear of Plaintiff's vehicle. Further, that said accident was the result of Defendant Ferrie's negligence and that Defendant FedEx is vicariously liable as owner of the vehicle.

VII.

That as a direct and proximate result of the negligence of the Defendants, the Plaintiff was injured in body and mind so that he has, in the past, and will, in the future, suffer great bodily injury, mental pain and anguish.

VIII.

That as a further direct and proximate result of the negligence of the Defendants, the Plaintiff has, in the past, and will, in the future, be forced to incur the expenses of doctors, hospitals and other related medical expenses in endeavoring to treat and cure himself of said injuries.

IX.

That as a further direct and proximate result of the negligence of the Defendants, the Plaintiff was rendered unfit and unable to work and, as a result of the permanent nature of said injuries, has, in the past, and will, in the future, suffer loss of earnings and earning capacity.

X.

That as a further direct and proximate result of the negligence of the Defendants, the Plaintiff's vehicle was damaged in the amount of One Thousand and no/100 Dollars (\$1,000.00).

WHEREFORE, Plaintiff prays for judgment against the Defendants for a reasonable sum in excess of SEVENTY-FIVE THOUSAND AND NO/100 (\$75,000.00) DOLLARS, together with interest, costs and disbursements as allowed by law. Plaintiff also demands

a trial by jury.

/s James E. Malers

For: JAMES E. MALTERS #67040
MALTERS, SHEPHERD & VON HOLTUM
Attorneys for Plaintiff
727 Oxford Street - P. O. Box 517
Worthington, MN 56187-0517
jmalers@msvlawoffice.com
(507) 376-4166
Fax: (507) 376-6359

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CHARLES KENDALL LUNDBERG

(b) County of Residence of First Listed Plaintiff Lincoln County, Minnesota
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
James E. Malter, Malter, Shepherd & Von Holtum, P.O. Box 517,
Worthington, MN 56187-0517; (507) 376-4166

DEFENDANTSMICHAEL ROBERT FERRIE and
FEDERAL EXPRESS CORPORATION

County of Residence of First Listed Defendant Lincoln Co., South Dakota
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act		
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USCA § 1332

Brief description of cause:
motor vehicle accident with personal injuries

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
75,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/15/2020

SIGNATURE OF ATTORNEY OF RECORD

/s James E. Malter

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE